

#2490

signed 8-12-99

sanctions order appended

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JOHN A. EARNSHAW,

DEBTOR.

**CASE NO. 99-41743-13
CHAPTER 13**

**ORDER DISMISSING CASE AND REQUIRING JAMES F. McMAHON
TO SHOW CAUSE WHY HE SHOULD NOT BE SANCTIONED PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9011**

This case is before the Court *sua sponte*. The Clerk's Office has brought to the Court's attention that attorney James F. McMahon commenced this case by filing on behalf of his client only a voluntary petition and an application to pay filing fees in installments. Federal Rule of Bankruptcy Procedure 1007(a)(1) requires such a petition to be accompanied by "a list containing the name and address of each creditor" or "a schedule of liabilities," but Mr. McMahon did not include either even though employees in the Clerk's Office directed his attention to the Rule. In the absence of the required list or schedule, the clerks cannot fulfill their duty to give notice of the filing of the case to the debtor's creditors. Rule 1007(a)(4) provides that an extension of time for filing the list of creditors "may be granted only on motion for cause shown." Mr. McMahon has filed no such motion. Consequently, the Court concludes this case filing is void and the case is hereby dismissed. Mr. McMahon is directed to inform any creditors he may have told of this case that the case has been dismissed.

In addition, Bankruptcy Rule 9011 provides in pertinent part:

(b) By presenting to the court . . . a petition, . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support . . . ;
and

(4) the denials of factual contentions are warranted on the evidence. . . .

Mr. McMahon is hereby directed to show cause by written response filed on or before September 3, 1999, why he should not be fined pursuant to subsection (c) of the Rule as a sanction for violating this subsection by filing this case in violation of Rule 1007.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of August, 1999.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE

#2490

signed 12-9-99
**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JOHN A. EARNSHAW,

DEBTOR.

**CASE NO. 99-41743-13
CHAPTER 13**

ORDER SANCTIONING ATTORNEY JAMES F. MCMAHON

This matter is before the Court following receipt of attorney James F. McMahon's response to an order to show cause. The Court issued the order to show cause because Mr. McMahon had filed a bankruptcy petition on behalf of a client without including either a list of creditors or a schedule of liabilities as required by Federal Rule of Bankruptcy Procedure 1007(a)(1), even though employees of the Clerk's Office in Topeka directed his attention to the Rule. On the petition, a box was checked indicating that the debtor was estimated to have between 100 and 199 creditors. Believing the omission of the list and schedule made the filing void, the Court dismissed the case one week after it was filed. In his response to the show cause order, Mr. McMahon conceded that he had been referred to Rule 1007 but nevertheless chose to file the case without identifying the debtor's creditors. He indicated he thought he would be given time to correct the defective filing.

Rule 1007(a)(1) and (c) make clear that a voluntary bankruptcy petition must be accompanied by a list of creditors or a schedule of liabilities, unless an extension of time is sought and obtained under 1007(a)(4) "for cause shown." At least one clerk in the office where Mr. McMahon planned to file the

case referred him to this rule and told him he had to supply with the petition a mailing matrix listing the debtor's creditors. The matrix is necessary so that the Clerk's Office can provide the creditors with notice of the filing of the case within the time required by internal operating procedures. Despite the need for the matrix, the Clerk's Office would have to accept the filing even without the matrix, as Mr. McMahon was also correctly told. Rule 5005(a)(1) was amended in 1993 to make clear that clerks cannot refuse to accept defective filings, because: "It is not a suitable role for the office of the clerk to refuse to accept for filing papers not conforming to requirements of form imposed by these rules or by local rules or practices. The enforcement of these rules and local rules is a role for a judge." Advisory Committee Note (1993) to Fed. R. Bankr. P. 5005.

According to Mr. McMahon, an employee in another division of the Clerk's Office erroneously informed him that he would be given time to provide the mailing matrix later if he filed the petition without a list of creditors. Choosing to rely on this advice, he deliberately filed his client's petition without complying with Rule 1007. An employee of the Clerk's Office then called him to request a matrix and he asked for time to file one, but was told the employee would present the defective filing to the judge since Mr. McMahon was indicating that he could not or would not file one immediately. After speaking with the clerk who contacted Mr. McMahon, the Court believes Mr. McMahon may have been aware that the Clerk's Office would send creditors notice of the commencement of the case only once, and that he and his client would have had to send the notice to any creditors added after the first list was supplied to the Clerk. With 100 or more creditors, this could have required substantial time and expense unless the first list included most of the creditors.

Under the circumstances, the Court concludes that Mr. McMahon's actions must be sanctioned. Although it is regrettable that a Clerk's Office employee offered Mr. McMahon erroneous legal advice, the Court believes that lawyers rely on legal advice from non-lawyers at their peril. For his knowing violation of Bankruptcy Rule 1007, Mr. McMahon is ordered to pay \$200 to the Lawyers' Fund for Client Protection established by Kansas Supreme Court Rule 227. *See* 1999 Kan. Ct. R. Annot. 411-426. Within thirty days of this order, he shall provide the Court with proof of his compliance.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of December, 1999.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE